

No. 14 13/87-6Lab. 174.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Special Machines, By Pass, Karnal *versus* Shri Surjit Singh.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 537 of 1992

between

SHRI SURJIT SINGH, SON OF SHRI RANDHIR SINGH, VILLAGE AND P.O. KUNJPURA,
DISTRICT KARNAL .. Workman

and

THE MANAGEMENT OF M/S. SPECIAL MACHINES, BY-PASS KUNJPURA CROSSING,
G. T. ROAD, KARNAL.

Present :

Shri M.L. Chaudhna, Authorised Representative for the workman.
None for the management (*ex parte*).

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Notification No. 32590-1/L.D. dated, 29th October, 1991 :

Whether the termination of services of Shri Surjit Singh, is justified and in order? If not, to what relief he is entitled?

2. The workman and the management were Summoned. The workman appeared and filed the claim statement that he joined the respondent management in the month of August, 1981 as Sales Representative and the workman had been working continuously with the respondent upto 6th March, 1987. The workman was member of Provident Fund Account No. 5352/257 and he was a member of F.S.I. and was holding Card No. 3465149, but the management terminated his services,—*vide* order dated 7th March, 1987. The respondent Management had agreed to reinstate him during the pendency of the case, the workman joined the respondent management on 17th December, 1990 but the respondent attached him with their consignment Agent, of M/s. Rite International (P) Limited, 113/20, Navyug Market, Ghaziabad for promoting their sales in U.P.—*vide* order dated 12th February, 1991. The workman represented that he cannot be attached with M/s. Rite International as the reason that M/s. Rite International has entirely a distinct entity but the management did not accede to the request of the workman and he was not allowed to work at Karnal (factory premises), he used to draw his salary i.e. Rs. 1,012.80 paise after deducting the amount of Provident Fund etc. at the time of termination of his service, the attachment of the workman with M/s. Rite International (P) Limited, amounts to retrenchment termination of his services because the M/s. Rite International (P) Limited, has a separate entity and the management has not given any notice stating reason of his termination nor paid one month's salary in lieu of notice period and the management has not paid retrenchment compensation. The respondent management has terminated his service of the workman as a measure of punishment and the management has adopted Unfair Labour Practice, in terminating the services of the workman. The post against which the workman was working is still existing with the respondent, as juniors to him are still working so his termination is illegal and against the provisions of Section 25-G of the Industrial Disputes Act. Hence this claim statement was filed he be taken back in service with full back wages along with continuity of service and costs.

3. The respondent management on service appeared and filed the reply to the claim statement that Section 2 A of the Industrial Disputes Act, 1947 deal the cases of illegal termination, dismissal, discharge or retrenchment while in the present case, the services of the concerned plaintiff has not been terminated so far. Therefore, the present reference is liable to be rejected on this ground alone. The plaintiff has totally and fraudulently pressed the material facts that plaintiff is not a workman as decided by the Hon'ble Court; the plaintiff has no *locus standi* to approach this Court as the plaintiff does not fall in the definition of the workman under the Industrial Disputes Act. He also pleaded that plaintiff was appointed as Sales Representative and services of the workman were terminated,—*vide* order dated 7th March, 1987 and plaintiff raised a dispute which was referred to the Hon'ble Court under reference bearing No. 288 of 1992 which has since been decided by the learned predecessor Shri B.K. Gupta and held that plaintiff does not fall in the definition of the workman. It is also submitted that plaintiff has also filed Civil Writ Petition in the Hon'ble High Court of

Punjab and Haryana at Chandigarh. It is admitted that during the pendency of previous reference bearing No. 288 of 1992 the respondent/management made an offer to the plaintiff to join the duties without going on merits of the case on previous terms and conditions by way of miscellaneous application which was decided by this Hon'ble Court and aggrieved management challenged the validity of that order before the Hon'ble High Court. The plaintiff as per the directions of the Hon'ble High Court joined the duties and he was attached with our consignment Agent for promoting the sales in U.P. which was the part and partial duty of the plaintiff and hence the application be dismissed with costs.

4. After that the respondent/management did not appear and the workman has not filed any replication. On the pleadings of the parties, the following issues were framed :-

- (1) As per terms of reference ?
- (2) Whether the applicant have no *locus standi* to file the application ? OPM
- (3) Whether the applicant is not a workman ? OPM
- (4) Relief.

5. My findings on the above issues are as under :-

Issue No. 1 :

6. The management not appeared and proceeded against *ex parte* but the workman himself has come into witness box as WW-I and closed his evidence.

7. The learned Authorised Representative for the workman made submission that the workman was transferred to Gaziabad and the unit of Gaziabad is of different nature though the owner may be same but that unit is doing different work of the unit where the workman was working. The learned Authorised Representative for the workman made submission that when the workman was posted in this factory and he could not be transferred to other factory to other work and for which he placed reliance Management of Messer Reneo Vickers India Limited *versus* Lt. Governor of Delhi I others and holding that salesman is a workman and the Court while a determining the status of a person as a workman is not supposed to go by the designation of a person. The Court has to look into the nature of duties of the person concerned and on the basis of his main duties, it should be determined whether he is covered under the definition of the workman as provided under Section 2(s) of the Act.

8. I do agree with contention that the salesman is a workman and come definition of workman and as defined in the Industrial Disputes Act. Hence I accept the plea of the workman that he is workman and he has completed more than 240 days of service in a year and could not be transferred without his consent.

9. As such I am of the view that the reference is maintainable and I decide this issue in favour of the workman and against the management.

Issues No. 2 and 3 :

10. Both these issues are not pressed or argued by the parties and hence I decide both these issues against the management.

Issue No. 4 (Relief) :

11. In view of my findings of the above issues I accept the reference petition and claim petition filed by the workman and I hold that the workman is entitled to be reinstated with continuity of service but back wages 10%. The reference is answered and returned accordingly, with no orders as to costs.

P. L. KHANDUJA,

Dated the 5th May, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 1277, dated : the 9th May, 1994.

A copy is forwarded to the following :-

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Karnal.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.